IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2009

CORAM:

THE HON'BLE MR.JUSTICE K.RAVIRAJA PANDIAN

AND

THE HON'BLE MR.JUSTICE T.RAJA

W.A.Nos.1884 and 1885 of 1999

1.The District Forest Officer
Erode
2.Conservator of Forests, Salem ... Appellants in both W.As

Vs.

1.M/s.Obli Granites, rep.by
Managing Partner Mrs.Padmavathy
Recreation Club Road
Mettur Dam, Salem District

2.The State of Tamil Nadu rep.by
its Secretary
Industries Department
Fort St.George
Chennai 600 009

3.The District Collector
Salem District
Salem.

4.The Forest Settlement Officer
Attur, Salem District. ... Respondents in both W.As

Writ Appeal in W.A.Nos.1884 and 1885 of 1999 are filed under Clause 15 of the Letters Patent against the order dated 26.4.1999 made in W.P.Nos.7061 and 7062 of 1997 respectively on the file of this Court.

For Appellants : Mr.P.S.Raman,Advocate General
assisted by Mr.S.N.Kirubanandam,
Spl.G.P. (Forest)

For Respondents : Mr.K.Ramakrishna Reddy for R.1
Mr.K.Balasubramanian,Spl.G.P.
For RR.2 to 4

JUDGMENT

K.RAVIRAJA PANDIAN,J.

The correctness of the order of the Writ Court dated 26.4.1999 in Common order made in W.P.Nos.7061 and 7062 of 1997 is assailed in these appeals by the District Forest Officer, Erode.

2.The facts of the case are as follows:
An extent of 4.89.5 hectares of land in Kannamoochi village, Mettur Taluk Salem District in S.No.265/3 was notified in the Salem District Gazette Extraordinary Issue No.1 dated 3.1.1990 among other lands by the District Collector- third respondent inviting tender applications for grant of quarrying lease of granite under Rule 8 of the Tamil Nadu Minor Mineral Concession Rules, 1959. Under the notification, sealed tenders were invited upto 3 p.m on 12.2.1990. In that auction, the first respondent herein has become the successful bidder for a sum of Rs.81,00,900/- and paid the amount as required by the Rules. The Director of Geology and Mining through the District Collector recommended to the Government by proceedings dated 20.2.1990 for grant of lease in favour of the first respondent. The Government by its letter dated 11.5.1990 accepted the recommendation of the Director of Geology and Mining and directed that the bid be confirmed and the letter of commitment be issued in favour of the first respondent. It was further informed by the said letter that the respondent should set up a granite cutting and polishing industry in Tamil Nadu immediately and the actual lease would be granted only after the unit is set up and the first respondent was directed to intimate the fact of setting up of the unit through the Director of Geology and Mining so as to enable the Government to grant necessary quarry lease by having the unit inspected by a team of technical officers. Pursuant to the letter of commitment, the first respondent put up a granite polishing and cutting industry at Chellampillai kuttai Muthunaickampatti village, Omalur Taluk, Salem district over the land in an extent of 21.41 acres with investment in a sum of Rs.4 Crores and informed the setting up of the factory by their letter dated 24.6.1992. Despite informing about the putting up of the industry and requesting for execution of the lease deed, the revenue authorities did not execute the lease deed, which compelled the first respondent to approach this Court by filing writ petition in W.P.No.4159 of 1992 seeking for a relief of writ of mandamus. The writ petition was disposed of by this Court by observing thus:
"It is seen from the facts mentioned above that the petitioner has complied with all the conditions stipulated by the Government and has also set up an industry as required by the Government. In these circumstances, it is totally unjust and unreasonable on the part of the Government not to execute the lease agreement in favour of the petitioner. Hence,I deem it just and proper to issue a mandamus directing the first respondent to grant lease and execute lease agreement with the petitioner in respect of the lands mentioned above within three months from the date of receipt of a copy of this order. In the meanwhile, the petitioner is permitted to carry on quarrying operations and also transport the quarry material from the land in question to any destination. The writ petition is disposed of accordingly. No costs."

3. While that being so, the Forest Department came into picture by contending that the Government issued a notification under Section 4 of the Tamil Nadu Forest Act vide G.O.Ms.No.1431 Forest and Fisheries Department dated 22.12.1984 in respect of the land in S.F.No.265 of Kannamoochi village to form a reserved forest and the same has been notified in the Government Gazette dated 10.4.1985 and the District Gazette dated 21.4.1985. When Forest Settlement Officer was appointed to hear the claim, he was informed that as per G.O.Ms.No.628 Revenue Department dated 17.7.1980, the Kannamoochi village was taken up for re-survey and the work was completed during fasli 1390. As per re-settled account, the Survey Numbers and boundaries notified already under Section 4 of the Forest Act were completely changed. Because of the said fact, the further proceedings pursuant to Section 4 notification could not be proceeded with. The District Forest Officer was requested to propose the amendment to the original notification. The amendment so proposed was notified in the

Tamil Nadu Government Gazette on 14.8.1991 and the District Gazette on 21.11.1991 and again the Forest Settlement Officer was appointed to adjudicate the claims.
4. As the first respondent was issued with a lease in respect of part of survey No.265/3 over an extent of 4.89.5 hectares of Kannamoochi village, the notification was challenged by the first respondent. However, the writ petition in W.P.No.3378 of 1997 was disposed of by directing the first respondent to approach the Forest Settlement Officer, which reads thus:
"It is open to the petitioner to bring into notice of the Forest Settlement Officer, the orders of LAKSHMANAN,J., in W.P.NO.4159 of 1992 and W.M.P.No.5984 of 1992 dated 8.7.1992, when the petitioner files objections. Simply because the petitioner has been granted a lease in the year 1990, the petitioner cannot question a notification issued in the year 1984 stating that after the amendment is made after the year 1990, the rights accrued to the petitioner need not be disturbed. As I have already stated the petitioner has to file objections before the Forest Settlement Officer. As and when it is done, I do hope that the respondent especially the Forest Settlement Officer will take note of the fact of the tender and auction conducted by the Government and the orders of LAKSHMANAN,J. passed in W.P.No.4159 of1992 and W.M.P.No.5984 of 1992 dated 8.7.1992, which had become final."

5. As directed in W.P.No.3378 of 1997, the first respondent filed a claim petition claiming protection under Section 7 of the Forest Act before the Forest Settlement Officer -fourth respondent, who, by his order dated 7.4.1997 rejected the first respondent's request. As against that order, the first respondent filed writ petition No.7061 of 1997. When the matter thus stood, the third respondent District Forest Officer by his proceedings dated 17.2.1997 directed the first respondent not to proceed with the quarrying operation, which is contrary to the Forest Act. Aggrieved by the said proceedings dated 17.2.1997, the first respondent filed writ petition in W.P.No.7062 of 1997.

6. Both the writ petitions were allowed by the learned single Judge by reason of the impugned order. The correctness of the same is now assailed before us.
7. It is contended on behalf of the appellants that the subject land has been declared as a forest area under the Tamil Nadu Forest Act and when that being the position, the Forest Department is the authority to grant lease or permission to quarry granite in that area after obtaining due permission from the Central Government. Hence, the first respondent is not entitled to quarry the land pursuant to the grant made by the District Collector. In order to sustain their case, the appellants had taken in aid the decision of the Supreme Court in the case of T.N.GODAVARMAN THIRUMULKARD VS. UNION OF INDIA reported in (1997) 2 SCC 267.

8. Per contra, it was contended on behalf of the first respondent that not only the revenue Department, but the Forest Department also fell in error in non-suiting the first respondent for the quarrying right granted in favour of the first respondent on untenable grounds. The claim of the appellants that the land in dispute has been declared as a forest land under Forest Act is totally incorrect. Even in the amendment to the notification alleged to have been issued under section 4 of Forest Act, the disputed land i.e., S.No.265/3 has not been included. Hence, the basic contention of the appellants falls to ground. Even assuming for a moment that the land is included in the notification under section 4, until a notification under section 16 is issued, it cannot be regarded as a forest land and Section 7 of the Tamil Nadu Forest Act protects the right of the first respondent.

9. We heard the argument of the learned counsel on either side and perused the materials on record.

10. There is no dispute that the land in S.No.265/3 was notified in the Salem District Gazette as well as daily news papers in English and Tamil offering the same for quarrying by the District Collector by virtue of the power under the then rule 8 of the Tamil Nadu Minor Mineral Concession Rules, 1959. Though there is no explicit provision in the rules during the relevant period for prospecting of

the minerals, it is the duty of the Geology and Mining Department to survey the lands and the mineral available in the land to furnish the details to the Government for the purpose of notifying that area for granting quarry lease. For that purpose, a separate cell called survey cell is available and doing the works in the Director of Geology and Mining Department.

11. It is not disputed either by the District Collector or by the Director of Geology and Mining that the land has been offered for lease of quarrying right only after the survey being conducted in respect of the land and the mineral available in the land. There is also no dispute about the subject quarry with the sub-division in S.No.265/3 has been notified in the Salem District Gazette calling for tenders. It is an admitted fact that the first respondent has become the successful bidder and paid the bid amount of Rs.81,00,900/- as required under the rules. The bid has been confirmed by the Government and the letter of commitment was also issued on condition the first respondent should put up an industry within the State of Tamil Nadu as required under the then existing Tamil Nadu Minor Mineral Concession Rules. It is also a further admitted fact that the first respondent has put up an industry at the cost of few Crores of rupees and informed the Government and the District Collector about the fulfilment of the condition of the letter of commitment. As the lease deed has not been executed, despite the same, the first respondent filed writ petition and obtained an order directing the Government to execute lease deed and permit the first respondent to quarry, which has become final.

12. It is pertinent to state that right through neither the District Collector nor the Director of Geology and Mining have disputed the factum by filing a counter affidavit to the writ petition. Only the Forest Department is disputing the grant of lease by contending that the area, which is the subject matter of the lease, is covered under a notification issued by the Forest Department under Section 4 of the Tamil Nadu Forest Act. Though it is contended by the Forest Department that an amendment to the original notification under Section 4 was issued in the Government Gazette on 14.8.1991 and the Salem District Gazette on 21.11.1991, nothing was placed either before the Writ Court or before us to establish that the survey No.265/3 was notified under Section 4. The amendment was necessitated, according to the appellants, because of the re-survey conducted by the revenue Department, the survey numbers and alignment of the survey fields were considerably changed and sub-division has also been effected. It is an admitted fact that the survey No.265 has been sub-divided and an extent of 4.89.5 hectares was carved out and sub-division number has been given as 265/3 in the resurvey. This survey number has not been notified in the amended notification under Section 4 of the Forest Act. Thus, the appellants are not able to establish before this Court that survey No.265/3 is one of the survey number covered under the notification issued under Section 4 of the Tamil Nadu Forest Act.

13. Further, the notification under Section 4 of the Act is merely a notification declaring the intention of the Government to constitute certain land as a reserved forest and is specifying as nearly as possible the situation and limit of such land. Further, such notification is required to be published in the Government Gazette. Unless it is so published, it is of no effect. In order to be clear, it is better to re-produce the explanation offered by means of a counter by the Forest Department", which reads thus:
"According to the re-survey the S.NO.251 of the Kannamoochi village was splitted into two survey Nos., and correlated to the new survey No.(1) S.No.264/5. Extent 0.29.0 ha. which is classified as U.A.W.D. and (2)S.No.265 an extent of 768.88.5 classified as U.A.W.D. The area of the old S.No.251 has also been changed as 769.17.5 ha. as against 769.08.0 ha..."

14. Thus, there is absolutely no reference in the notification about the survey number 265/3. It is clear that the appellants have not taken note of the re-survey number and sub-division and notified the same as required under Section 4 of the Forest Act. In the absence of such notification, the

contention of the appellants cannot be sustained.

15. In order to be a forest land, it is declared to be so under section 16 of the Tamil Nadu Forest Act or in any land at the disposal of the State Government in respect of which Rules under Section 26 of the Tamil Nadu Forest Act have been made. The District Forest Officer had to exercise the power and shall discharge the duties of the District Collector. Only in those circumstances, the forest authorities have got power either to interfere with the mining operation or they should be consulted before the lease is granted. Notifying the intention of the Government under section 4 cannot be construed as declaring the land covered under the notification as a forest land. Unless and until the further notification under Section 16 of the Forest Act is issued, the Forest Department cannot claim that the survey No.265/3 is a part of the reserved forest. The effect of the notification under Section 4 is only to declare the intention of the Government to constitute certain land as a reserved forest land. It is an admitted fact that notification under section 16 of the Forest Act is yet to be issued. So the grant in favour of the first respondent, which has been confirmed by this Court in W.P.No.4159 of 1992 dated 8.7.1992 cannot be legally questioned by the appellants.
16. From the fore-going facts, it is clear that there is a tussle between the two Departments of the Government i.e., the revenue Department and the Forest Department. As already stated, the Government represented by the District Collector and the Director of Geology and Mining, who offered the land for quarrying and who accepted the huge amount of Rs.81,00,900/- and further directed the first respondent to put up a cutting and polishing industry, it is claimed that huge amount of Rs.4 Crores has been invested by the first respondent, have not come out with any explanation. They are enjoying themselves by keeping mum in the costly litigation. However, the forest Department, without declaring the subject land as a forest land as required under Section 16 of the Forest Act and not even notifying the sub-division in the amendment notification under section 4 of the Act claims that it is a forest land. Because of this attitude of the two Departments, the first respondent is put in untold hardship and he was constrained to come to the Court for more than four occasions for the relief.
17. The Advocate General taking cover under the T.N.GODAVARMAN THIRUMULKARD VS. UNION OF INDIA reported in (1997) 2 SCC 267, has submitted on behalf of the Forest Department that no quarrying activity should be allowed in the forest area, as we have already held that the disputed land has not been notified under the Forest Act, the judgment is not applicable. The Advocate General is not able to advance any argument on behalf of the revenue Department claims. The reasoning given by the learned single Judge is well founded and we are not able to take any exception to the same.

18. It is contended that at this point of time the first respondent cannot be allowed to carry on the quarrying operation in the area, which is totally covered by the lands of the Forest Department. It is true that the grant has been made as early as 1990 i.e., nearly two decades back. In this situation, what is the remedy available to the first respondent, who has parted with a huge sum of Rs.81,00,900/- in the year 1990 and who obtained more than two orders in its favour from this Court. Here again it is interesting to note that till date the revenue Department has not come forward to either support their action or atleast come forward to cancel the notification or the letter of commitment or the grant made in favour of the first respondent. Nothing of that sort has been done by the revenue Department and is watching the proceedings as mute spectators. The Advocate General submitted that that the amount may be directed to be refunded with six percent interest. It is submitted on behalf of the first respondent that the first respondent has borrowed money for payment of the bid amount and he is paying heavy interest at the rate of 24 percent. It is also pointed out that by the first respondent that under Rule 36-B of the Tamil Nadu Minor Mineral Concession Rules, if the grantee committed default in payment of any amount to the Department, simple interest at the rate of 24 percent per annum is leviable on the grantee. Hence, in the present case also the same rate of interest may be given. It is further submitted that in a similar set of facts

the writ Court by its order dated 22.6.2000 made in W.P.No.6923 of 2000 directed the Government to repay the bid amount with interest at 18% per annum which order has been accepted by the Government. The said direction reads as follows:
"... When the entitlement of the amount is not in dispute and no offer was made to the petitioner refunding the amout, though he is entitled for the same, the petitioner is entitled for the interest at 18% per annum from the date of cancellation of the petitioner's auction viz., 2.7.1992 till the date of payment. So the respondent is directed to pay the said amount of Rs.1,30,400/- with simple interest at 18% per annum within two months from the date of receipt of copy of this order."

19. Having regard to the fact that the transaction between the parties in this case is a commercial transaction and having regard to the Rule 36-B, where the Government themselves claim interest at the rate of 24 percent per annum for the default in payment of any amount and having regard to the further fact the public money is going to be paid as interest, we are of the view that direction for payment of interest at the rate of 18% per annum would meet the interest of justice. Here gain the interest amount would be very huge having regard to the time lag. As we already confirmed the order of the writ Court, if the Government gives the land on lease to the first respondent, that would not only save the Government from payment of huge amount as interest and they will also get revenue by way of seigniorage fee in proportion to the mineral to be quarried. But if the Government is still of the view that due to the lapse of time the quarry would fetch more amount or the quarry operation cannot be allowed as the area is encircled with the forest land, we are of the view that the Government has to repay the bid amount with interest at the rate of 18 percent per annum from the date of payment till the amount is paid back. Therefore, considering the peculiar facts of the case as discussed above, the Government is directed to pay to the first respondent the bid amount with interest at the rate of 18 percent per annum from the date of payment of the bid amount till the amount is paid back.

20. With the above direction, the writ appeals are disposed of. However, there is no order as to costs. Consequently, the connected C.M.P.Nos.16243 and 16244 of 1999 and W.A.M.P.No.80 of 2009 are closed.

(K.R.P.,J.) (T.R.,J.)
18.09.2009
Index:Yes
Internet:Yes
usk
Copy to:
1.The District Forest Officer
Erode
2.Conservator of Forests, Salem .

3.The Secretary
Industries Department
State of Tamil Nadu
Fort St.George
Chennai □ 600 009

4. The District Collector
Salem District
Salem.

5.The Forest Settlement Officer
Attur, Salem District.

K.RAVIRAJA PANDIAN,J.
AND T.RAJA,J.
usk

Judgment in
W.A.Nos.1884 and 1885 of 1999

18.9.2009